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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,232	10/20/2003	Alan A. Gilmore	0275D-113COE	4076
27572	7590	05/05/2005	EXAMINER	
HARNESS, DICKEY & PIERCE, P.L.C.			DUDA, RINA I	
P.O. BOX 828			ART UNIT	
BLOOMFIELD HILLS, MI 48303			PAPER NUMBER	
			2837	

DATE MAILED: 05/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/689,232	Applicant(s) GILMORE, ALAN A.	
	Examiner Rina I. Duda	Art Unit 2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21-80 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-80 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/11/05</u> . | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 12/21/04 have been fully considered but they are not persuasive. In reference to applicant's argument that Germanton et al do not teach a method for controlling a motor by pulsing the motor so that the output spindle of a tool rotates under operative load conditions in discrete incremental amounts, the stated portions of the Germanton et al reference clearly describe how the motor is being pulsed by circuit 36 in incremental amounts. Therefore, the applied prior art teach applicant's invention as presented. In reference to applicant's argument that the value for the frequency range being less than 50 Hz is not obvious, the examiner has not been convinced by applicant's arguments that the value of the frequency cannot be selected by one skilled in the art depending upon the design of the invention and the function of said invention.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 21, 30-40, 44-47, 50-56, and 60-80 are rejected under 35 U.S.C. 102(b) as being anticipated by Germanton et al (US Patent 5014793).

Claims 21, 30-38, 47, Germanton et al describe a controller for operating portable power tools comprising a motor 42 for driving an output spindle 16, a battery

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for providing power to the hand held tool, a power switching device 41 for applying constant frequency PWM signal to the motor, and a controller including means 34, 36, 40, and 43 for controlling the power switching device 41, monitoring operating characteristics such as current/speed/voltage of the power tool, and controlling the PWM signal in response to a change in the operating characteristic to thereby cause the power tool to operate in pulses, see figure 1-3 and corresponding descriptions.

Claim 39, Germanton et al describe switch 17 connected to the tool controller, the controller controls the amount of power to the motor based of the position of the switch, see column 6 lines 48-64.

Claim 40, Germanton et al describe 7 lines 39-58 how the duty cycle of the PWM signal changes according to the output from the trigger switch.

Claims 44-46, 50-56, and 60-80, Germanton et al describes a power tool including a first switch 13 for controlling the amount of power to the motor and a second switch 17 for causing the tool controller to operate the motor in a pulse mode, wherein the first switch modulates the power to the motor in accordance with the position of the switch and the second switch causes discontinuous incremental rotation of the output spindle, see column 7 lines 4-68, column 8 lines 1-28, and figures 1-3.

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 22-29, 41-43, 48, 49, and 57-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Germanton et al (US Patent 5014793).

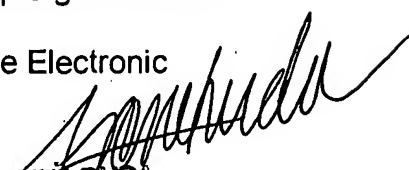
Germanton et al discloses the claimed invention except for the specific frequency for the PWM signals. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to choose a frequency range of less than 50Hz, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The documents cited teach various systems for controlling the power applied to a portable power tool.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rina I Duda whose telephone number is 571-272-2062.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached at 571-272-2107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
RINA DUDA  
PRIMARY EXAMINER